

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2004 OCT 22 P 1:57

ANN MITCHELL,

Plaintiff,

v.

HALLMARK HEALTH SYSTEM, INC./
LAWRENCE MEMORIAL HOSPITAL
and JULIE CHASE SHAUGHNESSY,

Defendants.

Civil Action No. 04-cv-12169-REK

U.S. DISTRICT COURT
DISTRICT OF MASS.

MOTION TO DISMISS COMPLAINT COUNTS II THROUGH XI

The Defendants, Hallmark Health System, Inc./Lawrence Memorial Hospital and Julie Chase Shaughnessy, hereby move to dismiss Counts II through XI of the Complaint. Taking the Complaint's factual allegations as true, the Plaintiff has plainly failed to state cognizable causes of action for employment discrimination and retaliation under the Massachusetts Fair Employment Practice Act, Mass. Gen. L. c. 151B ("FEPA"), and, as such, Counts II through V should be dismissed. The Plaintiff's remaining statutory civil rights claims (Counts VI and VII) and common law claims (Counts VIII through XI) should also be dismissed as barred by the exclusivity provisions of the FMLA, the FEPA and the Workers' Compensation Act, Mass. Gen. L. c. 152 ("WCA") and/or because they fail to state claims on which relief can be granted.

In support of this Motion, the Defendants submit the accompanying Memorandum of Law in Support of its Motion to Dismiss Counts II Through XI.

REQUEST FOR ORAL ARGUMENT

The Defendants respectfully request that an oral argument be scheduled on this motion.

Respectfully submitted,

HALLMARK HEALTH SYSTEM, INC./
LAWRENCE MEMORIAL HOSPITAL and
JULIE CHASE SHAUGHNESSY

By their attorneys,



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Dated: October 22, 2004

Certification Pursuant To Local Rule 7.1(A)(2)

I hereby certify, pursuant to Local Rule 7.1(A)(2), that on October 22, 2004, I contacted Plaintiff's counsel, Alice Whitehill Wiseberg, Esq., by telephone and discussed in a reasonable and good faith effort to resolve and/or narrow the issues addressed in this motion.



Macon P. Magee

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail ~~(by hand)~~ on 7/22/04

